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By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287; *Broadband-Enabled Health Care Solutions*, GN Docket No. 16-46; *Rural Health Care Support Mechanism*, WC Docket No. 02-60; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

On behalf of Alaska Communications, the following is a proposal intended to address the immediate crisis facing rural health care providers (RHCPs) that submitted timely funding requests to the Universal Service Administrative Company (USAC) for eligible services under the FCC's rural health care (RHC) universal service program. Specifically, it provides a path to ensure adequate funding of eligible services in funding year (FY) 2017 and beyond; it also provides a method of redress for the shortfall that occurred in FY 2016 as a result of *pro rata* reductions to approved RHC applications filed between September 1st and November 30, 2016.

Nothing in the following proposal would detract from any universal service program or "move" funds from one program to another. Rather, the undersigned take direction from the mandate established in the Communications Act that *all* programs under Section 254 should be specifically, sufficiently and predictably funded.[1] Within each program, funding should be distributed to the extent that demand justifies the funding, and as necessary to fulfill the Section 254 mandates.

Because of the substantial benefits that the RHC program confers not only on rural inhabitants in general but on low-income inhabitants in rural areas in particular, the FCC should be open to addressing the RHC funding shortfall by taking into account the declining demand for low-income support, and looking at the two programs' budgets in tandem, as described below. Alaska Communications urges the Commission to take up this proposal and act on it as

[1] 47 U.S.C. § 254(b)(5).

quickly as possible so that RHCPs receive the critical broadband services they need to provide the best possible care to patients in rural areas.

Background

In 1997, the Commission established the RHC program mandated by Section 254 of the Communications Act, newly enacted as part of the Telecommunications Act of 1996, with a budget of $400 million per year.[2] At the time, the Commission had little basis for predicting how many RHCPs would use the support, nor how much demand would grow over time.[3]

Demand did grow, due to greater participation among RHCPs, increasing demand for bandwidth for more, and more sophisticated, tele-health applications, and new electronic records regulations, among other reasons. Unlike the other universal service programs, however, the RHC program still labors under that 20-year-old budget imposed by the FCC at the program's inception. Accounting for inflation alone, the RHC fund's budget should have grown to between $600 million and $700 million by FY 2017.[4] Add to that the needs of RHCPs for increased speed, bandwidth, security and redundancy, and expanded RHCP eligibility to include skilled nursing facilities, and the demand for RHC support can be expected to top $700 million in the near future, and continue growing.[5] For these reasons, Alaska Communications previously recommended that the Commission reset the budget for RHC support at $800 million, and automatically adjust the budget for inflation on an annual basis, going forward.[6]

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[2] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 (1997), at ¶ 608 (subsequent history omitted).

[3] *Id.* at ¶¶ 704 (observing that "there is no existing program to help us estimate the cost of funding the support program for health care providers that we adopt under sections 254(h)(1)(A) and 254(h)(2)(A), unlike our programs for high cost and low-income assistance for which we have historical data"), 705 (stating that "[n]o commenter has presented record evidence suggesting a method for determining the amount for a cap").

[4] Inflation can be calculated a number of different ways. Using the Bureau of Labor Statistics calculator, $600 in 1997 dollars adjusted for inflation would be closer to $610 million in 2017, whereas the same figure would be more than $690 million using the Consumer Price Index inflation calculator. Alaska Communications conservatively recommended the Commission reset the budget at $600 million for FY 2017, and adjust it for inflation each year thereafter. *See, e.g., Actions to Accelerate Adoption and Accessibility of Broadband-Enabled Health Care Solutions and Advanced Technologies,* WC Docket No. 16-46, Comments of Alaska Communications, n. 18 (filed May 24, 2017).

[5] *See id.* at 6-8. *See also* Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, in CC Docket No. 96-45, WC Docket No. 02-60, GN Docket No. 16-46, at 4 (filed June 9, 2017) ("ACS June 9 Letter").

[6] ACS June 9 Letter at 4; ACS May 24 Comments at 6.

In FY 2016, the insufficiency of the RHC program budget had real-world consequences for RHCP applicants who filed for support between September 1, 2016 and November 30, 2016, in the form of a 7.5 percent *pro rata* funding reduction.[7]

Applicants for FY 2017, which began July 1, 2017, still are waiting to hear whether and how much of a funding cut they may expect, should USAC approve their requests for RHC support. After experiencing those dramatic funding cuts for FY 2016, which they were unable to anticipate when they contracted for FY 2016 services, some RHCPs in Alaska declined to file for support for FY 2017, and others have requested that Alaska Communications postpone delivery of services for which they contracted, until after funding awards for FY 2017 (and any shortfall) are determined. Over four months of FY 2017 have passed with no funding decisions issuing from USAC. Even if their applications for funding are approved, RHCPs are anxious to know by what percentage their funding might be subject to a *pro rata* reduction. Nevertheless, overall RHC demand for FY 2017 is expected to exceed the budget once more.

RHCPs cannot be deemed to have "access" to broadband, as the Commission is required to ensure, if the support they need to purchase it is neither "predictable" nor "sufficient" to make services available at rates that are "reasonably comparable" to urban rates.[8] In short, the RHC program is failing to meet the requirements of the Communications Act, with no solution in sight. The RHC program is in crisis.

Proposals & Options

For some time, Alaska Communications also has urged the Commission to take a holistic approach to universal service reform, considering all of its programs as part of the overall mission to ensure that Americans in rural areas have affordable access to advanced services that are reasonably comparable to those available in urban areas. For example, Alaska Communications suggested that the Commission use funds collected but not distributed (or committed) for the RHC as well as other programs (such as the schools and libraries (E-rate) program) to help bridge the funding gap for FY 2016. Despite the use of such reserve amounts in recent quarters to lower the contribution rate, Alaska Communications believes there to be at least several hundred million dollars remaining in such reserves. Indeed, USAC's opaque calculations of amounts received but not committed, and projected demand, remain a troubling aspect of USAC's performance of its duties. In any event, the Commission has not acted on ACS's proposal.[9] There seemed to be some hesitation within the agency to exceed the decades-old, self-imposed $400 million annual budget for the RHC program in the absence of a rulemaking, notwithstanding the Commission's well-established authority to waive its own rules for good cause, and the statutory mandate that the FCC must ensure that rural health care providers pay rates that are "reasonably comparable to rates for similar services in urban areas."

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7 *See* 47 C.F.R. §54.675(f). The Southcentral Foundation, for example, was expected to take a $625,000 cut in support for FY 2016. *See* ACS June 9 Letter at 3.

8 47 U.S.C. §§254(b), 254(h)(1)(A).

9 *E.g.,* ACS June 9 Letter at 4.

In the interest of identifying some solution acceptable to the Commission, the undersigned suggest a new approach. The proposals that follow draw on the relationship between programs that serve many of the same constituents. In particular, RHC support and the low-income (LI) program, comprising "Lifeline" and "Link Up" support, both address the needs of low-income consumers in rural areas of the nation. Because RHCPs serve a large proportion of low-income customers,[10] and low-income consumers are those most acutely harmed by under-funding of the RHC support program, it is a logical choice to combine the budgets of the RHC and Lifeline programs. Similarly, the E-rate program, though structured differently, tends to confer substantial benefits in rural school districts, especially in Alaska, where a high proportion of families qualify for Lifeline support as well.

In developing the following proposals, an effort was made to avoid the perceived "budget cap" problem– that is, the Commission's desire to stay within its self-imposed budget for universal service programs. Therefore, it is proposed that the Commission look at linking the budgets mechanisms (whether soft or hard caps) for RHC and one or more other programs, such as the LI program or the schools and libraries or "E-Rate" program.

The budget for the LI program is far greater than that for RHC support – as of 2016, it was set at $2.25 billion and indexed for inflation.[11] However, demand for LI support has declined from $2.1 billion in 2012 to less than $1.6 billion in 2016.[12] USAC expects LI support to continue to decline to roughly $1.3 billion for 2017.[13] In short, LI demand has declined more than $200 million since the Commission established the current budget, and more than $800 million from its peak in 2012. The inflation-adjusted budget for the E-Rate program is $3.99 billion this year, and although nearly all of the budget is needed to meet demand in some years, a substantial reserve of monies collected for schools and libraries but not distributed, for a variety of reasons, has built up over time.[14]

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[10] ACS June 9 Letter at 6 (citing National Association of Community Health Centers letter to Chairman Pai, stating that Alaskan RHC services predominantly benefit low-income patients).

[11] *Lifeline and Link-Up Reform and Modernization,* WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (*Low-Income Program Reform Order*). The budget will rise in 2018 to $2.279 billion. Public Notice, WC Docket No. 11-42, "Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount," 32 FCC Rcd 5087 (Wireline Competition Bur. 2017).

[12] *Low-Income Program Reform Order* ¶36 (support declined from about $2.1 billion in 2012 to less than $1.5 billion in 2015); Universal Service Administrative Company, 2016 Annual Report at 22 (showing 2016 LI demand of $1.54 billion).

[13] *Lifeline and Link-Up,* WC Docket No. 03-109, Universal Service Administrative Company, "Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2017," at 23 (filed Aug. 23, 2017).

[14] "Wireline Competition Bureau Announces E-Rate Inflation-Based Cap for Funding Year 2017," FCC Public Notice in CC Docket No. 02-6, DA 17-243 (Wireline Competition Bur. rel.

The Commission therefore should take immediate action to address the current crisis in RHC support, taking advantage of synergies between the RHC program and its other universal service programs, and simultaneously begin on the path to crafting long-term solutions to "right size" the budget for RHC support, as follows:

1. The Commission should issue instructions to USAC to adopt immediate stopgap measures so that RHC support does not continue to be insufficient to cover demand for eligible services and ensure reasonable comparability of rates as required under Section 254(h)(1)(A) of the Communications Act.

a) As a first option, the Lifeline and RHC program budgets could be "joined" in a limited way. The annual 2018 budget (though not a hard cap, still a target) for the Commission's LI program is upwards of $2.279 billion, but demand currently is substantially below that level. This "headroom" between the LI program budget and actual demand for LI support could be utilized in the near term for the RHC program, to the extent it is not needed to meet LI demand. In the short term, the Commission could waive the self-imposed $400 million RHC program budget, to the extent that both LI budget headroom available and RHC program demand outstrips the annual $400 million budget, in order to ensure that the RHC program meets the requirements of Sections 254(b) and (h)(1)(A) discussed above. In this way, a combined LI-RHC budget could be created for FY 2017, based on the annual $400 million FY budget for the RHC program and the annual LI budget (*i.e.*, $2.25 billion for calendar year 2017 and $2.279 billion calendar year 2018).

The Commission likely would need to instruct USAC to raise additional funds through the contribution mechanism to cover RHC program demand in excess of $400 million (funding for the LI program is not raised at the budgeted level, but only collected based on actual demand, determined on a quarterly basis). However, to raise the RHC program funds that would likely be needed for FY 2017, the contribution factor would only need to increase by less than four-tenths of one percentage point.[15]

March 13, 2017). *See also* ACS June 9 Letter at 5 & n. 17 (from 2002 to 2016 as much as $5 billion was collected but not disbursed for E-Rate support and carried forward for future use).

[15] For FY 2017, gross RHC program demand was roughly $567 million, or about $167 million more than the $400 million annual budget. *See* USAC Rural Health Care Committee Briefing Book (July 24, 2017), at 22 (available at: https://www.usac.org/_res/documents/about/pdf/bod/materials/2017-07-24-rhc-briefing-book.pdf). In the most demanding case, to fully fund this shortfall, USAC would need to raise one-quarter of this amount in each calendar quarter, or about $42 million. The current quarterly contribution base is about $10.9 billion, *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, "Proposed Fourth Quarter 2017 Universal Service Contribution Factor," DA 17-884 (rel. Sept. 12, 2017), at 3. $42 million is roughly 0.38% of this amount, which is the incremental amount by which the contribution factor would need to rise to meet this increased demand.

The Commission could issue these instructions on its own motion, waiving any of its own rules as necessary based on good cause shown. And the self-imposed "budget cap" would not be exceeded using such a linked LI-RHC budget. Importantly, the LI program would remain the first priority use of the full amount budgeted for that use; RHC program demand would be satisfied only to the extent that headroom remains based on actual LI demand being less than the LI budget.

b) Alternatively, if the Commission were to place greater priority on limiting the potential for RHC program demand to place upward pressure on the contribution factor, it could put a similar structure in place, but impose a lower limit on RHC program access to the unused LI budget "headroom." In 2016, when the Commission adopted the *Low-Income Program Reform Order*, the LI demand was about $1.54 billion.[16] The Commission could use that figure, rather than the full LI budget, to limit RHC program access to unused LI budget headroom, still yielding some additional support for the under-funded RHC program, at least in the near term. LI program demand has declined from about $1.54 billion for 2016 to about $1.3 billion in 2017; thus, under such an arrangement, about $240 million from the LI budget could be made available to fund unmet need for RHC support, over and above the current $400 million, for FY 2017. Importantly, as with Option (a) above, the entire LI budget would remain available to meet the needs of that program, as demand should require.

Because actual LI demand is expected to be lower in 2017 than in 2016, and beyond that it may rise or fall, the $400 million RHC program budget would likely be augmented only by small increments each year under this option, an amount equal to the difference between actual demand for that funding year and the $1.54 million demand level that prevailed in 2016 when the Commission adopted the *Low-Income Program Reform Order*. And, to the extent that LI demand exceeds that level in some future year, there would be no additional funding for RHC support that year – but one would hope that the Commission will have completed RHC reform and an expanded budget for the RHC program by then.

c) As still another alternative, the budgets for RHC support and E-rate support could be combined, allowing the FCC to use amounts collected for the E-rate program but not disbursed to meet the needs of that program, to meet unfunded demand for RHC support under the current $400 million budget. Unlike the first two alternatives, this alternative would not require the Commission to increase the contribution factor, nor require USAC to raise any additional funds, although the amounts remaining in reserve appear recently to have declined by a substantial amount.

Linking the budgets for the RHC program with one or more of those other universal service programs that serve rural and low-income Americans is reasonable in light of the interrelated mandates of the Communications Act: (i) that *all regions* of the Nation should have access to advanced telecommunications and information services, (ii) that quality services should be available at just, reasonable and affordable rates, (iii) that consumers in *all regions* of

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[16] Universal Service Administrative Company, 2016 Annual Report at 22 (showing 2016 LI demand of $1.54 billion).

the Nation, *including low-income consumers* and those in rural, insular and high-cost areas, should have access to telecommunications and information services that are reasonably comparable to those available in urban areas, at prices that are reasonably comparable, (iv) that *RHCPs* should have access to services at rates reasonably comparable to those charged in urban areas of the same state, and (v) that support should be specific, predictable and sufficient to preserve and advance these universal service capabilities.[17]

The Commission may modify its program budgets today, waiving its rules as necessary in acknowledgement that good cause exists, both because of the proven insufficiency of the $400 million budget for the RHC program in FY 2016 and FY 2017, and because of the record evidence that low-income consumers in rural areas (regardless of whether they benefit from the FCC's LI program) have a demonstrable need for the services of RHCPs.[18] Simply put, where RHCPs have received funding from this program, low-income consumers benefit. Where the funding is insufficient to meet the needs of RHCPs, health care delivery to low-income consumers suffers.

2. The Commission should order USAC to collect a sufficient amount in universal service contributions to meet the budgeted amount in one of the above scenarios for a combined budget that will be sufficient to satisfy the RHCPs' demand for both telecommunications and advanced services.[19] Again, this is something the Commission may do on its own motion.

3. In light of the ways in which the current RHC program fails to satisfy the Section 254 mandates, the Commission also must immediately begin the rulemaking process, to create greater long-term stability for the RHC program and provide greater certainty to RHCPs. In this rulemaking the Commission should propose (i) increasing the budget as if the $400 million budget adopted in 1997 had been adjusted for inflation annually since then, (ii) indexing the budget for inflation going forward, (iii) changing the way in which the Administrator recovers its costs to bring the program in line with the other universal service programs, where costs are external to the budgeted program amounts, (iv) revising FCC standards concerning qualifying services and facilities, and the evidentiary showing that should be required, and (v) improving the timing and transparency of the application approval process for the RHC program. By updating the rules governing the RHC program, the FCC can better ensure that the program will be sufficient and more predictable for current and future tele-health demands.

To be effective, the Commission must undertake these steps without further delay, to assure RHCPs that RHC support for approved projects will be adequate for their rural broadband needs in FY 2017 and beyond.

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17 47 U.S.C. §§254(b), (h).

18 RHCPs have described the considerable benefits of the RHC support program to populations that historically have been medically underserved, the residents of rural areas in general but *low-income patients in particular*. *See, e.g.,* ACS June 9 Letter.

19 47 U.S.C. §§ 254(h)(1)(A), 254(h)(2)(A).

Please direct any questions concerning this matter to me.

Respectfully submitted,

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